

**Editor's note: lease reinstated by Private Law 97-55 dated Jan. 8, 1983**

DEVON CORP.

IBLA 81-239

Decided August 25, 1981

Appeal from decision of Wyoming State Office, Bureau of Land Management, holding lease W 24153 to have expired at the end of its primary term.

Affirmed.

1. Oil and Gas Leases: Communitization Agreements -- Oil and Gas Leases: Extensions

To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976) and 43 CFR 3107.2-3, the evidence must show that actual drilling operations were being diligently pursued on the leasehold or for the lease under an approved cooperative or unit agreement on the last day of the lease term. Where no communitization agreement associating leased lands with a producing well on other lands is filed for approval with Geological Survey prior to the end of the primary term of the lease, and where Survey, therefore, has no opportunity to approve such an agreement prior to this time, the lease does not qualify for an extension under 43 CFR 3107.2-3.

APPEARANCES: Gary W. Catron, Esq., Oklahoma City, Oklahoma, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Devon Corporation appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated December 11, 1980, dismissing Devon's protest and holding that oil and gas lease W 24153 expired at the end of its primary term because it did not qualify for an extension under 43 CFR 3107.2-3 which provides as follows:

## § 3107.2-3 Period of extension.

Any lease on which actual drilling operations, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time, shall be extended for 2 years and so long thereafter as oil or gas is produced in paying quantities. [1/]

Effective June 1, 1970, BLM issued noncompetitive oil and gas lease W 24153 for a period of 10 years. The lease covered the E 1/2 of sec. 26, T. 20 N., R. 112 W., sixth principal meridian. Devon and Eason Oil Company each were assigned a 50 percent working interest in the lease. The lease on the west half of sec. 26 (W 47820) was owned by Tenneco Oil Company.

On August 8, 1979, appellant applied to the Wyoming Oil and Gas Conservation Commission requesting an exception to a spacing order requiring a single well in the southwest quarter of 640-acre spacing units. This was denied. Appellant also applied for a forced pooling order because Tenneco had declined to participate in the cost and expense of a test well. Appellant states that it withdrew the forced pooling application and the exception application in September 1979, when Tenneco agreed to participate in a test well.

Appellant, Tenneco, and Eason entered into an operating agreement dated October 18, 1979, covering all of sec. 26. A copy of this document accompanied the appeal. It was signed by the three participating parties, but was not filed with Geological Survey (Survey). Appellant applied to Survey for permission to drill a well in SW 1/4, sec. 26. Survey approved the application on December 6, 1979.

Appellant states that the well was spudded on January 5, 1980; that it reached total depth on March 10, 1980, at 12,508 feet; that it was completed on July 20, 1980, as a gas well; that the 24-hour test rate for the well was 20 barrels of oil and 1.9 MM of gas; and that the well is currently shut-in awaiting pipeline connection.

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1/ 30 U.S.C. § 226(e) provides in pertinent part as follows:

"(e) Competitive leases issued under this section shall be for a primary term of five years and noncompetitive leases for a primary term of ten years. Each such lease shall continue so long after its primary term as oil or gas is produced in paying quantities. Any lease issued under this section for land on which, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for two years and so long thereafter as oil or gas is produced in paying quantities."

On May 1 and May 20, 1980, appellant submitted checks to BLM "in payment of delay rental." Each check was written for \$160, the entire annual rental due under the lease. BLM refunded the payments. On November 25, 1980, Devon protested the expiration of the lease. On December 11, 1980, BLM dismissed the protest and held that the lease had expired.

The issue presented is whether appellant's lease expired at the end of its primary term or was extended for a 2-year period by a communitization agreement within the meaning of the statute and regulation.

We find that appellant's lease did expire at the end of its primary term, May 31, 1980. Appellant asserts that the lease should be extended by reason of the agreement signed by the three parties concerned on October 18, 1979. Departmental regulation 43 CFR 3105.2-3 provides, however, that an agreement will be effective only after approval by the Secretary of the Interior. Appellant's agreement was never approved by Survey (the Secretary's delegate for this purpose) or even filed for approval. In a memorandum dated September 16, 1980, from the Acting District Supervisor, Survey, to the Chief, Branch of Lands and Minerals Operations, Wyoming State Office, BLM, the Acting District Supervisor stated that there was no activity on W 24153 that would make it eligible for extension. He noted that there was activity on the west half of sec. 26 and requested Survey's Casper Office to inform him if a communitization agreement dated prior to May 31, 1980, was pending approval. The Casper Office had no record of communitization.

[1] To qualify for a 2-year extension pursuant to 30 U.S.C. § 226(e) (1976) and 43 CFR 3107.2-3, the evidence must show that actual drilling operations were being diligently pursued on the leasehold or for the lease under an approved cooperative or unit agreement on the last day of the lease term. Duncan Miller, 10 IBLA 4 (1973); see Energy Trading, Inc., 50 IBLA 9 (1980).

Where a lessee fails to file a communitization agreement associating leased lands with a producing well on other lands for approval with Survey prior to the end of the primary term of the lease, and where Survey does not formally approve such an agreement prior to this time, the lease does not qualify for a 2-year extension under 43 CFR 3107.2-3. 43 CFR 3105.2-1(a); Kirkpatrick Oil Co., 32 IBLA 329 (1977), aff'd, Kirkpatrick Oil & Gas Company v. United States, No. 77-1247-B (W.D. Okla. Nov. 26, 1979); See Melvin A. Brown, 49 IBLA 234 (1980); C. J. Iverson, 21 IBLA 312, 323, 82 I.D. 386, 391 (1975); Harry D. Owen, 13 IBLA 33, 36 (1973); Duncan Miller, *supra*; Kirkpatrick Oil and Gas Co., 8 IBLA 108, 110 (1972). There is no evidence in the case file that a communitization agreement was filed.

Appellant claims that it should be allowed to file a communitization agreement back dated to before the end of the primary term, and that Survey should approve such agreement. Appellant cites Integrity

Oil and Gas, 42 IBLA 222 (1979), as support for that proposition. In that case the Board held that Survey's approval of a communitization agreement on April 18, 1979, back dated more than 6 months, extended the leases and the unit because the "approved cooperative or unit plan" required by regulations starts from the effective date of the approval, not the date the approval was actually signed. The facts in the case in issue are distinguishable from those in Integrity. The lessee in Integrity had, in fact, submitted a communitization agreement to Survey. Although the agreement was not actually signed by Survey until April 18, 1979, the effective date of the agreement was established by Survey as October 1, 1978 (30 days prior to the expiration of the lease). In the case before us, appellant never submitted the agreement to Survey and consequently it was never approved.

Appellant asserts that neither the United States nor any third party has suffered injury from the failure to comply with the formalities because all the tracts within the area operated as a de facto unit and all are federally owned land. While this may be true, it does not excuse appellant's failure to comply with the statute and regulations. Appellant also attempts to draw analogies between its case and cases in which the Board or the court has granted the lessee relief when the lessee failed to meet certain requirements of the regulations. Appellant refers to Woods Petroleum Corporation, 23 IBLA 12 (1975), in which the Board held that a lease in a unit area had been extended by drilling, even though the lease was not properly committed to a unit when the parties in interest and the Department had assumed the land was properly committed and there were no intervening rights to the leasehold. Woods involved an unusual situation in which both the parties and the Department assumed that the lease had been committed to the unit. These facts are not present in the case in issue.

Appellant asserts that the mistake of an employee in not filing the agreement should not bar it from seeking relief on equitable grounds. Appellant cites Ram Petroleum, Inc. v. Andrus, 478 F. Supp. 1165 (D. Nev. 1979), appeal pending, in which the court reinstated leases even though the lessee's employee had failed to make proper rental payments. Ram Petroleum involved termination of oil and gas leases because of the lessee's failure to submit the rental by the required date. The court held that the leases should be reinstated under 30 U.S.C. § 188(c) (1976) because the Congressional intent to grant relief in this type of situation was clear. <sup>2/</sup> That statute, however, applies to reinstatement of a lease where the lease has terminated because of failure to pay the rental on or before the anniversary date of the lease. There is no statutory provision for reinstatement of a lease where the lessee has not submitted a communitization agreement to Survey prior to the end of the primary term.

Appellant argues that Survey's regulation of drilling operations through applications and reports, regulation by the State of Wyoming,

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<sup>2/</sup> Contra, Ramoco, Inc. v. Andrus, 649 F.2d 814 (10th Cir. 1981).

and adherence of the parties to the operating agreement, provide the functional equivalent of a communitization agreement in that the interests of the parties are defined and the interests of the Government are protected. A communitization has its own form, content and purpose, however. Compliance with other regulations is not a substitute for following the regular procedure and obtaining the necessary approval for a communitization agreement. See Harry D. Owen, supra at 36-37.

There are no grounds for granting appellant's request that the Board permit appellant to file its agreement effective as of May 31, 1980, with instructions that the agreement be approved.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

